

previous consistency decisions make clear that Millennium's boilerplate, generalized arguments – that the Pipeline will decrease “reliance upon energy supplies from insecure sources” and “encourage the development of secure North American energy resources” – are inadequate to meet its burden.

In sum, the risks that the Pipeline poses to the New York City and Northern Westchester coastal zone far outweigh any of the Pipeline's undocumented potential benefits. And these risks are particularly unwarranted when there are other reasonable alternatives that would avoid them completely. The Town therefore joins in the DOS Objection's conclusion that the Pipeline is inconsistent with many policies in New York's CMP. “The requirement of consistency with federally-approved state coastal zone management programs is not one to be dismissed lightly,” and in this instance Millennium has not met its heavy burden for the Secretary doing so. Accordingly, the DOS Objection should be left to stand.

BACKGROUND

The proposed 424-mile long Pipeline would run from an interconnection at the Canada/United States border, through southern New York State, to its termination point in Mount Vernon, Westchester County, New York.¹⁰ Because the background of the Pipeline and these proceedings has been briefed by other parties and amici, the Town only briefly summarizes the facts pertinent to its brief and comments.¹¹

¹⁰ FEIS at 1-1.

¹¹ Where documents or other authority cited by the Town are publicly available on the internet, the Town refers to the appropriate website address for the document. Moreover, most every document cited herein may be retrieved on FERC's FERRIS system, accessible at www.ferris.ferc.gov, under docket number CP-98-150-000. By utilizing this citation method, the Town hopes to reduce the amount of paper generated by this appeal, and to further complement the Secretary's electronic facilitation of these proceedings. However, in the event the Secretary

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As currently conceived, the Pipeline will cross the Hudson River in the critical fisheries of Haverstraw Bay and, in so doing, require 2.1 miles of dredging and up to 400 feet of blasting – the latter never studied in the FEIS because Millennium first revealed its blasting plans after completion of the environmental review.¹² On May 9, 2002, within six months of receipt of Millennium’s blasting data, DOS issued its Objection. The Objection concluded that Millennium’s proposal was inconsistent with New York’s CMP because, among other things, the dredging and blasting would result in “the destruction of valuable habitat in the designated Significant Coastal Fish and Wildlife Habitat” of Haverstraw Bay.¹³

The Pipeline would also run adjacent to some 7.6 miles of the ConEd power lines, which supply 40% of the electricity demands of the City.¹⁴ While this portion of the Pipeline’s proposed route was particularly controversial throughout the environmental-review process,¹⁵ for purposes of the issues now before the Secretary, suffice it to say that both ConEd and the New York Public Service Commission (“PSC”) rejected a similar route between the towers on the ROW due to the extraordinary difficulty and undue risks associated with extensive blasting so close to the transmission lines.¹⁶

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requires a hard copy of any document cited herein, the Town immediately will provide such copy upon request.

¹² FEIS at 3-27; see footnote 26, infra

DOS Objection (attached as Exhibit 10 to the Millennium Br.) at 10-11.

FEIS at 6-25; Interim Order at 75.

See Point II(D)(3) of the Town’s Rehearing Brief.

See, e.g., FEIS at 6-11

Instead of declining further consideration of construction within the ROW until sufficient

“resolve the issue of construction and operation of the pipeline along this corridor.”¹⁷

Accordingly, without any public process, Millennium and PSC engaged in “back-room”

Understanding (“MOU”), entered into after the Supplemental Draft Environmental Impact Statement (“SDEIS”) was released, proposed the Taconic Alternative,¹⁸ now part of the Pipeline’s proposed route.¹⁹

Blasting along the Taconic Alternative route poses a significant threat of damage to the ConEd power lines and to homes and people in the surrounding area. The Town submitted un rebutted evidence that the blasting could impact coastal-zone residents living along the ROW by, among other things: causing damage to house foundations and septic systems; ejecting high-velocity, razor-sharp flyrock that could kill people thousands of feet from the blast zone; fracturing bedrock and thus permitting gas to migrate into area homes; and exposing residents to

Interim Order at 75.

¹⁸ FERC gave the public its only notice of this proposal on April 26, 2001 – not in an EIS, but in a short letter to some homeowners living along the ROW. FEIS at 6-25.

¹⁹ FEIS at Appendix “G” and 6-26. Millennium highlights the fact that the Taconic Alternative “was both suggested by, and strongly endorsed, by the Village [of Croton-on-Hudson].” (Millennium Br. at 64.) However, the Town was not a party to the MOUs or to the “back-room” negotiations that led to them, has never endorsed the Taconic Alternative either publicly or privately, and in fact consistently has opposed the Taconic Alternative since the beginning of the environmental review. Moreover, all of the coastal impacts described herein would occur outside of the Village and have little or no bearing upon it.

dioxin and other chemicals which – despite Millennium’s failure to perform even preliminary tests – likely are present in soil along the ROW.²⁰

In addition to its precarious route through Haverstraw Bay and along the ConEd ROW, the Pipeline also would require construction on a pristine stretch of the watershed of the City’s New Croton Reservoir.²¹ The Reservoir supplies unfiltered drinking water to 900,000 persons per day, and is listed by DEC as being “impaired” by phosphorus.²² Despite Millennium’s admission that construction of the Pipeline will cause phosphorus releases into the Reservoir, both the FEIS and the Certificate entirely ignored the Total Maximum Daily Load (“TMDL”) criteria, developed by DEC and approved by EPA, which prohibit any additional phosphorus loading into that waterbody.²³

The Pipeline further would require construction less than three feet above the City’s Croton aqueduct at the Bryn Mawr Siphon, another critical component of the City’s drinking-water system. After reviewing Millennium’s proposal, the City concluded that the project jeopardized the Siphon’s structural integrity, and revoked Millennium’s access altogether.²⁴

²⁰ FEIS at 6-32; Affidavit of Dr. Calvin Konya, sworn to July 2, 2001 (“Konya Aff.”) (attached hereto as Exhibit “F”).

²¹ Interim Order at 65-66.

²² Comments of the New York State Attorney General Concerning Adverse Environmental Impacts of the ConEd Offset/Taconic Alternative Pipeline Route On the New York City Drinking Water Watershed (“Attorney General Comments”) (attached as Exhibit 4 to DOS Brief) at 1, 4.

²³ See http://oaspub.epa.gov/pls/tmdl/waters_list.tmdl_report?p_tmdl_id=858; 6 N.Y.C.R.R. § 703.2.

²⁴ DOS Objection at 4-5 (quoting November 6, 2001 letter from City of New York Department of Environmental Protection to FERC).

Finally, the Pipeline would run parallel to and bisect several roads and two major arteries – Route 9 and the Taconic State Parkway that partly comprise the Indian Point nuclear-emergency evacuation network.²⁵ An accident or attack during the Pipeline’s construction, or intentional sabotage thereafter, could thus isolate thousands of coastal-zone residents from their only escape route during a nuclear emergency.

²⁵ See <http://www.westchestergov.com/indianpoint/planningforemerg.htm>.

²⁶ Millennium now disingenuously asserts that its blasting revelation was not a “project change” because it previously identified “the Hudson River ... as one of the waterbodies within possible blasting areas” as early as March 26, 1999. (Millennium Br. at 17.) This is patently untrue, and contradicted by a March 14, 2002 letter from Millennium to DOS (which Millennium
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